

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 736 OF 2024

YUGANDHARA
SHARAD
PATIL

Akshay Maruti Phad

.... Applicant

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Versus

The State of Maharashtra

.... Respondent

Mr. Siddharth Dilip Agarwal, (appeared through VC) a/w Himanshu Patil, for the applicant.

Ms. Pallavi N. Dabholkar a/w Poonam P. Bhosale, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 20th MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No 96 of 2023 registered at Uttam Nagar Police Station, Pune, under sections 385, 387, 364-A, 341, 323, 504, 506 r/w 34 of the Indian Penal Code. During the investigation of the case, offences under sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, (hereinafter referred to as “MCOC Act) are invoked.

2. Heard Mr. Siddharath Agarwal, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The prosecution story is that the main accused Babulal Mohal is the gang leader. The victims in this case Manisha and Meenakshi were working in a non government organisation. They had taken Rs. 10 lakhs from Babulal on the pretext of getting a railway stall at Pune Railway Station but they were unable to do so. Therefore, Babulal was convinced that these two had cheated him. On 13/09/2023, Babulal along with the other co-accused Amar Mohite, Pradip Nalawade and the present Applicant called Meenakshi to his house. She reached his house at around 9.30 p.m.. The Applicant and the other co-accused including Babulal detained her. They abused and assaulted her and demanded Rs. 17 lakhs. Meenakshi told them that the money given to her was with the other victim Manisha Pawar. Meenakshi was asked to make a phone call to Manisha and to call her at Katraj chowk. When Manisha reached there, she was abducted from there and she along with Meenakshi were brought to Babulal's house at Shivane,

Pune. Meenakshi was confined in a bed room and Manisha was confined in a hall. Meenakshi was asked to call her son in the morning and she was asked to tell her son to bring Rs. 17 lakhs. They threatened that if the money was not paid, she would be murdered. Meenakshi's son and daughter approached Anti Extortion Cell, Pune and informed about the incident. The Police Officers went to Babulal's house and took Babulal Mohal, Pradip Nalawade and Amar Mohite in the custody. The Applicant was not in that house at that point of time. He was subsequently arrested from Warje, Pune. It is the case of the investigating agency that the Applicant Akshay was the son-in-law of the main accused Babulal. On this basis, C.R. No. 96 of 2023 was registered at Uttam Nagar Police Station, Pune under the IPC offences. During the investigation, approval under Section 23(1) of MCOC Act was granted on 27/10/2023. Further investigation was carried out in accordance with MCOC Act and sanction under section 23(2) of the said Act was granted on 27/10/2023.

4. Learned counsel for the Applicant made the following

submissions.

The Applicant has not played any role in the entire offence. He was roped in only because he is the son-in-law of the main accused Babulal. The approval as well as the sanction under section 23(2) of the MCOC Act do not mention about nexus between the Applicant and the main accused Babulal. There are no criminal antecedents against the Applicant. Even prima facie, there is no case against him. The recovery of bank statement, telephone record etc. can be easily effected without the Applicant's custody. He further submitted that the Applicant was arrested in connection with this particular offence before the provisions of MCOC Act were applied. He was arrested on 15/09/2023. The learned Additional Sessions Judge, Pune vide his order dated 18/10/2023 had released the Applicant on bail. According to the learned counsel, after his release on bail, the provisions of MCOC Act were applied on 27/10/2023. Therefore as per the ratio laid down by the Hon'ble Supreme Court in the case of **Pradeep Ram Vs. State of Jharkhand and Another** reported in (2019) 17 Supreme Court Cases, 326, the Applicant's bail can be cancelled

and therefore he has apprehension of being arrested and hence he preferred an Application for anticipatory bail before the Special Court under MCOC Act vide Criminal Bail Application No. 7473 of 2023 which was rejected by the learned Special Judge under MCOC Act, vide his order dated 26/02/2024. Under these circumstances, the Applicant has approached this Court and according to the learned counsel, the Applicant has made out a case for grant of anticipatory bail. He further submitted that there is bar under section 21(3) of MCOC Act for exercising powers under section 438 of Cr.P.C., but, since the Applicant has not committed offence under MCOC Act, that bar will not operate against him.

5. Learned APP on the other hand opposed these submissions. She submitted that the victims have described his exact role in the offence. She submitted that the Applicant can also be prosecuted under MCOC Act. There is a proper sanction under section 23(2) of MCOC Act against the present Applicant as well. She relied on the observations of a single Judge Bench of

this Court in the case of **Chandrakant Vishnu Sawant and Another Vs. State of Maharashtra** reported in 2018 SCC OnLine Bom 17673 to contend that bar under section 21(3) of the said Act operates with its full force. Therefore, relief of anticipatory bail cannot be granted to the Applicant.

6. I have considered these submissions. I have perused the relevant statements in the charge-sheet annexed to this Application. In this case, the FIR is lodged by Vaibhav Pokhare who is son of the victim Meenakshi. He has stated that his mother Meenakshi had told him that she was going to meet Babulal Mohal on 13/09/2023 in the evening. Till about 11.30 p.m. she did not return home. Vaibhav then called the other victim Manisha, who told him that both the victims were abducted and confined by Babulal Mohal and his companions. On the next day morning i.e. on 14/09/2023, at about 8.30 a.m., his mother called him and told him that she and Manisha were detained by Babulal Mohal and the present Applicant in Babulal's house at Uttam Nagar, Pune and they were assaulting both of them. They were demanding Rs. 17 lakhs and if that money was not paid they would commit her

murder. She requested him to get Rs. 17 lakhs and to rescue her. Vaibhav immediately informed his sister and both of them approached the Police Commissionerate. In the meantime, Meenakshi again called him and told him that Babulal and his companion had taken Manisha to some other place. Vaibhav informed everything to the Police. In the meantime, some unknown person called from Manisha's phone number and told him to get Rs. 17 lakhs immediately and issued threats to commit murder of his mother. Officers of the Anti Extortion Cell went to Babulal's house and rescued both the victims. They arrested Babulal Mohal, Amar Mohite and Pradip Nalavade who were in the house. On this basis, the FIR is lodged. The present Applicant was not in the house but he was immediately arrested.

7. The statements of Meenakshi and Manisha recorded on 16/09/2023 are important. Meenakshi has stated that she was 75 year old. She has narrated as to how the money was taken by her from Babulal and admitted that she could not arrange to a get stall for them. Then she has described as to how she was taken to Babulal's house and was confined there. She has further stated

that, in the night, the Applicant Akshay had sent messages from Manisha's phone. The Applicant's role is clearly mentioned by Meenakshi. Similar is the statement of Manisha Pawar. Both of them have stated that the Applicant was present along with the other accused and the Applicant had sent messages using Manisha's phone.

8. The statement of Jayshree Mohal is also important. She is wife of Babulal Mohal. She has stated that the accused including the present Applicant who is her son-in-law had brought Manisha and Meenakshi to their residential house. She has further stated that Babulal, Pradip and Amar were assaulting Meenakshi and were demanding money. She has further stated that she had tried to stop the accused including the present Applicant and requested them to leave both the victims. But they did not pay any attention. Thus, at this stage there is sufficient material to show the involvement of the present Applicant.

9. At the first instance, the Applicant was granted bail by

the learned Additional Sessions Judge by making observations that the offence is serious but was not punishable with death or life imprisonment. This observation itself is not correct because Section 364-A of the Indian Penal Code provides punishment with death or imprisonment for life. Section 364-A of the I.P.C. reads thus.

“Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or to do or abstain from doing any act or to pay shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

Thus, ingredients of this offence are clearly made out in the aforementioned statements. Even other sections of I.P.C. are clearly made out.

10. Though the Applicant does not have other criminal antecedents, yet he can be prosecuted for commission of offence

punishable under MCOC Act, if the other conditions are satisfied. In that context, observations of the Hon'ble Supreme Court in the case of **Kavitha Lankesh Vs. State of Karnataka and others**, reported in (2022) 12 Supreme Court Cases, 753 are important. Paragraph 32 of the said Judgment reads as follow:-

“ At the stage of granting prior approval under section 24(1)(a) of the 2000 Act, therefore, the competent authority is not required to wade through the material placed by the Investigating Agency before him along with the proposal for grant of prior approval to ascertain the specific role of each accused. The competent authority has to focus essentially on the factum whether the information/material reveals the commission of a crime which is an organized crime committed by the organized crime syndicate. In that, the prior approval is qua offence and not the offender as such. As long as the incidents referred to in earlier crimes are committed by a group of persons and one common individual was involved in all the incidents, the offence under the 2000 Act can be invoked. This Court in Prasad Shrikant Purohit in SCC paras 61 and 98 expounded that at the stage of taking cognizance, the competent Court takes cognizance of the offence and not the offender. This analogy applies even at the stage of grant of prior approval for invocation of

provisions of the 2000 Act. The prior sanction under section 24(2), however, may require enquiry into the specific role of the offender in the commission of organized crime, namely, he himself singly or jointly or as a member of the organized crime syndicate indulged in commission of the stated offences so as to attract the punishment provided under section 3(1) of the 2000 Act. However, if the role of the offender is merely that of a facilitator or of an abettor as referred to in Section 3(2) , 3(3), 3(4) or 3(5), the requirement of named person being involved in more than two charge-sheets registered against him in the past is not relevant. Regardless of that, he can be proceeded under the 2000 Act, if the material collected by the Investigating Agency 31 reveals that he had nexus with the accused who is a member of the organized crime syndicate or such nexus is related to the offence in the nature of organized crime. Thus, he need not be a person who had direct role in the commission of an organized crime as such.”

Though the discussion in that Judgment is in respect of Karnataka Control of Organised Crimes Act, 2000, provisions of the said Act are similar with those under MCOC Act. These observations are applicable to MCOC Act as well.

11. There is no dispute that many offences are registered against Babulal which were punishable with more than three years for which cognizance was taken by the Competent Courts as is mentioned in the approval dated 27/10/2023, under section 23(1) of the said Act.

12. The Hon'ble Supreme Court in the case of Pradeep Ram (supra) in paragraph no. 29 has observed that

“ In all cases, where the accused is bailed out under orders of the Court and new offences are added including offences of serious nature, it is not necessary that in all cases earlier bail should be cancelled by the Court before granting permission to arrest an accused on the basis of new offences.”

Thus, the Applicant can be immediately arrested and therefore he has apprehension of arrest. In this background he has filed an Application for anticipatory bail. However, there is a clear bar under MCOC Act, under Section 21(3) of the said Act which reads thus:-

“Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person

on an accusation of having committed an offence punishable under this Act.”

The facts in the present case show that the accusations against the Applicant of having committed an offence under MCOC Act are well founded. Hence, relief under section 438 of Cr.P.C. cannot be granted to the Applicant in these circumstances.

13. As a result of this discussion, no relief can be granted to the Applicant in this case. The Application is rejected.

(SARANG V. KOTWAL, J.)